MIXED COURT

RULES

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THE MIXED COURT

AT SHANGHAI

RULES OF PROCEDURE

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N O T I C E.

For the sake of uniformity, it is requested that Criminal Complaints be filed with the Registrar in triplicate, in the form given on the attached specimen. Forms similar to the attached specimen may be obtained from the Registrar's Office at $1.00 per 20.

An application before Court is necessary in all cases where a warrant is required. In the absence of any intimation that a warrant will be applied for a summons will issue.

(Sgd) M. O. Springfield

Acting Registrar.

Shanghai, July 24, 1917.

THE MIXED COURT

AT SHANGHAI

RULES OF PROCEDURE

CRIMINAL PROCEEDINGS.

How charge to be made.

1. A person desiring to institute criminal proceedings against another shall file with the Registrar a complaint in writing signed by the complainant and specifying the offence charged.

Summons or Warrant.

2. In every case the Court shall proceed, if the accused is not already in custody, either by way of summons to him or by way of warrant for his apprehension in the first instance, according as the nature and circumstances of the case require.

Summons.

Service.

3. A summons shall be served by the delivery of it to the person summoned personally, or if he cannot be conveniently met with then by its being left at his usual or last known place of abode or business within the particular jurisdiction.

Proof of service.

The person effecting service must attend in court to prove service if necessary.

Warrant.

In what cases.

4. If the person summoned does not obey the summons the Court may (after proof of due service of the summons) issue a warrant for his apprehension.

Notwithstanding the issuing of a summons a warrant may be issued at any time before or after the time appointed in the summons for the appearance of the accused.

A warrant shall not be issued in the first instance unless the charge is in writing and signed by the person laying the charge.

Countersignature of warrant.

5. A warrant when issued before being executed shall be countersigned by the Senior Consul or by some person thereunto lawfully authorised by him.

Search Warrant.

In what cases.

6. Where proof or suspicion is shown to the satisfaction of the Court that anything on, by or in respect of which a crime or offence cognizable by the Court has been committed, or which is necessary or required for or in connection with proof of such a crime or offence, is in any house or place over which, by reason of the nationality of the occupier thereof the Court has jurisdiction, the Court may issue a warrant to search the house or place, and if any thing searched for is found, to seize it, and apprehend the occupier of the house or place.

The warrant shall be directed to some officer by name, who alone shall be entrusted with its execution, but he may be accompanied by any person or persons necessary to assist him in his search.

A general warrant to search shall not be granted, but the particular house or place must be indicated in it.

If the house or place is closed, and the officer is denied admission, after demanding admission and disclosing the authority and the object of his visit, it may be forced open.

Witnesses.

Summons.

7. Where it is shown to the Court that any person over whem the Court has jurisdiction is likely to give materal evidence, either for the prosecution or for the defence, the Court shall issue a summons for his attendance. And in the case of a witness, outside the jurisdiction, the Court may request the competent authority to secure the attendance of such witness.

Warrant after summons.

8. If any person so summoned does not obey the summons, and does not excuse his failure to the satisfaction of the Court, then (after proof of the service of the summons) the Court may issue its warrant to compel his attendance.

Warrant in first instance.

10. When it is shown to the Court that any person subject to its jurisdiction is likely to give material evidence either for the prosecution or for the defence, and that it is probable he will not attend to give evidence, unless compelled to do so, then instead of issuing a summons the Court may issue a warrant in the first instance.

Refusal to answer.

11. If any witness within the particular jurisdiction refuses to answer any question put to him, and does not excuse his refusal to the satisfaction of the Court, then the Court may, commit him to prison.

Procedure.

Variance of evidence.

12. When the accused comes before the Court no objection to any charge, summons, or warrant, for any defect in substance or form, or for any variance between it and the evidence adduced on the part of the prosecution, shall be allowed.

But if any variance between the charge and the evidence appears to the Court to be such that the accused has been thereby deceived or misled, the Court may adjourn the hearing.

Hearing or Remand.

13. Where the accused appears in answer to a summons or is brought before the Court upon a warrant or is already in custody the Court may proceed to hear and determine the matter in a summary way but may in its discretion remand the case to be heard upon a day of which due notice shall be given.

Notice of Charges.

14. Where a case is so remanded and it is intended at the trial to proceed upon any charge or charges not contained in the summons or warrant or not contained in the Police Charge Sheet (where the accused is already in custody) the prosecution shall file in Court not less than three clear days before the date fixed for the hearing copies of such charge or charges and the Court shall give notice thereof to the accused or his Counsel at least two clear days before the date fixed for the hearing.

Adjournments.

15. If in the course of proceedings the Court considers it necessary or advisable, the Court may, for any cause whatsoever, adjourn the proceedings and may, from time to time, remand the accused for such time as seems reasonable, not exceeding fourteen days, to some prison or other place of security.

During the period of remand the Court may nevertheless, order the accused to be brought before it.

Instead of detaining the accused in custody during the period of remand the Court may release him upon his finding such security, as, in the opinion of the Court, will be sufficient to ensure his appearance at the proper time.

Hearing.

Non-appearance of prosecutor.

16. Where the accused comes before the Court on summons or warrant, or otherwise, either originally or on adjournment, then if the prosecutor, having had due notice of the time appointed for the hearing or adjourned hearing of the charge, does not appear in person or by counsel or attorney, the Court shall dismiss the charge, unless for some reason it thinks proper to adjourn or further adjourn the hearing, with or without imposing any terms.

Conduct of charge.

17. The prosecutor shall be at liberty to conduct the charge and to have the witnesses examined and cross-examined by counsel on his behalf.

Of defence.

18. The accused shall be admitted to make his full answer and defence to the charge, and to have the witnesses examined and cross-examined by counsel on his behalf; and if he does not employ counsel he shall, at the close of the examination of each witness for the prosecution, be asked by the Court whether he wishes to put any questions to the witness.

Admission of charge by accused.

19. The substance of the charge shall be stated to the accused, and he shall be asked if he has any cause to show why he should not be convicted.

If he thereupon admits the truth of the charge, and does not show sufficient cause why he should not be convicted, the Court may convict him accordingly. The Court shall take such evidence as may be considered necessary to enable it properly to pass sentence.

If he does not admit the truth of the charge, the Court shall proceed to hear the prosecutor and such witnesses as he examines and such other evidence as he adduces in support of his charge.

On the termination of the whole evidence in support of the charge, if it appears to the Court that a *prima facie* case is made out against the accused, he shall be asked by the Court if he wishes to say anything in answer, or has any witnesses to examine or other evidence to adduce in his defence ; and the Court shall then hear the accused and his witnesses and other evidence, if any.

Evidence in reply.

20. If the accused adduces any evidence in his defence the prosecutor may, by leave of the Court, adduce evidence in reply thereto.

Order of proceedings.

21. Where the prosecutor is represented by Counsel proceedings shall commence by a short statement by Counsel setting out the material facts intended to be proved. He shall then proceed to call his witnesses who shall be open to cross-examination by the accused or his Counsel.

At the conclusion of the case for the prosecution, if the accused be represented by Counsel and it is intended to call evidence other than the evidence of the accused himself, Counsel for the defence shall open his case in like manner and proceed to call his witnesses. At the conclusion of his evidence he shall sum up on the whole case and Counsel for the prosecution shall have the right of reply.

Where the accused elects to give evidence and it is not intended to call other evidence Counsel for the accused shall not be entitled to make any opening statement but shall proceed to call the accused at once. At the conclusion of his evidence and cross-examination Counsel for the accused shall sum up his case and Counsel for the prosecution shall have the right of reply.

Where no evidence is called for the defence Counsel for the prosecution shall sum up immediately on the conclusion of the examination and cross-examination of his witnesses and Counsel for the defence shall have the right of reply.

If a witness be cross-examined the party calling him, or his Counsel, may re-examine him.

Conviction or dismissal.

22. The Court having heard what each party has to say as aforesaid, and the witnesses, and the evidence adduced, shall consider the whole matter and finally determine the same, and shall either convict the accused or dismiss the charge.

Minute.

23. In case of conviction a minute thereof shall be made, and shall be preserved among the records of the Court.

24. In case of dismissal of the charge the Court may, if it thinks fit, on being requested so to do, give the accused a certificate thereof which certificate shall on being produced, without further proof, be a bar to any subsequent charge for the same offence against the same person. Certificate.

CIVIL PROCEEDINGS.

Petition.

Petition.

1. All proceedings shall be commenced by the filing of a petition, except where otherwise provided by these Rules.

Contents of Petition.

2. The petition shall contain a narrative of the material facts, matters, and circumstances on which the plaintiff relies, such narrative being divided into paragraphs numbered consecutively, each paragraph containing, as nearly as may be, a separate and distinct statement or allegation, and shall pray specially for the relief to which the plaintiff may conceive himself entitled, and also for general relief.

The petition must be as brief as may be consistent with a clear statement of facts on which the prayer is sought to be supported, and with information to the defendant of the nature of the claim set up.

The petition may not contain statements of the mere evidence by which the facts alleged are intended to be proved.

Copies to be filed.

3. There shall be filed three copies of the petition in English and Chinese, one separate copy in Chinese, and a copy in English and Chinese for each defendant in the case.

Fees.

4. Filing fees are payable at the time of filing of the petition and no petition will be accepted until the filing fee is paid.

Security to answer Suit.

Security.

5. Upon petition being filed the Court shall issue a summons to be served with a copy of the petition upon the defendant calling upon him to appear in person before the Court to give security for his appearance in answer to the suit.

If the defendant fails to appear a warrant shall forthwith be issued for his arrest but the Court may if it thinks fit adjourn the summons and notify the defendant thereof.

The summons shall state clearly that if the defendant fails to appear as ordered he shall be liable to arrest and shall contain a notice that if the defendant desires to avoid being temporarily detained he shall immediately give notice to the Court of the names of his intended sureties and shall appear in answer to the summons accompanied by such sureties.

6. The defendant shall be held in custody by the Court until he gives bail or security with a surety or sureties to the satisfaction of the Court in such sum as the Court shall think sufficient to secure his attendance but not exceeding the prob-

able amount of the debt or damages to be recovered in the action, that he will appear at any time when called on, while the action is pending. If the defendant fails to appear when called upon to do so, his surety or sureties shall forthwith pay into Court the amount of such security and in default thereof shall be liable to be arrested and kept in custody until the same is paid.

Withdrawal of Security.

7. Where money is paid into Court as security or otherwise such money shall not, nor shall any part thereof, be paid out without the specific order of the Court.

Absconding Defendant.

8. Where there is reasonable cause for suspicion that a defendant is about to abscond from the jurisdiction of the Court, the Court may, upon *ex parte* application by the plaintiff supported by satisfactory evidence at any time after petition filed, order that the defendant be forthwith arrested and detained in custody until he gives such security for his appearance as the Court shall order.

Urgent Orders.

Urgent Orders.

9. On proof of great urgency or other peculiar circumstances, the Court may, if it thinks fit, before a petition is filed, and without notice, make an order of injunction, or an order to sequester money or goods, or to hold to bail, or to attach property.

Recognizance.

10. Before making such an order the Court may require the person applying for it to enter into a recognizance (with or without a surety or sureties as the Court thinks fit), signed by the party applying (and his surety or sureties if any), as a security for his being answerable in damages to the person against whom the order is sought, or to give such other security for that purpose by deposit or otherwise as the Court thinks fit.

Duration of order.

11. No such order shall remain in force more than 24 hours, unless within that time a suit is regularly instituted by the person obtaining the order.

Any such order may be dealt with in the suit as seems just.

Varying orders made on ex parte application.

Ex parte orders may be varied.

12. Where an order is made on a motion *ex parte* any party affected by it may within 7 days after notice of it, apply to the Court by motion to vary or discharge it ; and the Court on notice to the party obtaining the order, either may refuse to vary or discharge it or may vary or discharge it with or without imposing terms as to security or other things as seems just.

Particulars of Claim.

Application by defendant.

13. Any plaintiff not giving sufficient information to enable the defendant reasonably to understand the nature and particulars of the claim set up against him may be ordered, on the application of the defendant before answer, to amend his petition or to give further particulars.

The plaintiff may be ordered to annex copies of, or produce for inspection such papers or documents in his possession or power as he has referred to in the petition.

Amendment of Petitions.

14. A petition may be amended at any time before answer without leave but a petition shall not be amended after answer except by leave of the Court.

Parties.

Suit on behalf fo others.

15. Persons entitled to sue and suing on behalf of others as guardians, executors, or administrators,—or on behalf of themselves and others, as creditors in a suit for administration,—must state the character in which they sue.

Joint and several demand.

16. Where the plaintiff has a joint and several demand against several persons, either as principals or as sureties, it is not necessary for him to bring before the Court as parties to a suit concerning such demand all the persons liable thereto, but he may proceed against one or more of the persons severally liable.

Non-joinder or misjoinder.

17. If it appears before or at the hearing that any person not joined as plaintiff or as defendant ought to be so joined,—or that any person joining as plaintiff or as defendant ought not to be so joined,—the Court may order the petition to be amended, with liberty to amend the other pleadings (if any), and on such terms as to time for answering, postponement or adjournment of hearing, and costs, as justice requires.

But no person shall be so joined as plaintiff without satisfactory evidence to the Court of his consent thereto.

Distinct causes of suit in one petition.

18. In case a petition states two or more distinct causes of suit, by and against the same parties, and in the same rights, the Court may, either before or at the hearing, if it appears inexpedient to try the different causes of suit together, order that different records be made up, and make such order as to adjournment or otherwise as justice requires.

In case a petition states two or more distinct causes of suit, but not by and against the same parties, or by and against the same parties but not in the same rights, the petition may on the application of any defendant be dismissed.

Answer.

Time for answer.

19. An answer to a petition shall, unless the Court otherwise order, be delivered within twenty clear days from the service of the petition.

Failure to answer.

In default of answer the plaintiff may apply to the Court by motion for judgment and upon such application the Court may upon hearing the evidence give judgment in favour of the plaintiff or may extend the time for delivery of answer upon such terms as to the Court appears just.

Further time for answer.

20. The defendant may obtain further time for putting in his answer, by motion stating the further time required and the reason why it is required.

Proof of Claim.

21. Where a defendant does not put in any answer he shall not be taken as admitting the allegation of the petition, or the plaintiff's right to the relief sought; and at the hearing (even though such defendant does not appear) the plaintiff must open his case, and adduce evidence in support of it, and take such judgment as to the Court appears just.

Nature of Answer.

22. The answer shall show the nature of the defendant's defence to the claim set up by the petition, but may not set forth the evidence by which such defence is intended to be supported.

It should be clear and precise, and not introduce matter irrelevant to the suit.

It must deny specifically each and all of the material allegations in the petition which the defendant intends to deny at the hearing.

It must specifically admit such material allegations in the petition as the defendant knows to be true or desires to be taken as admitted.

Copies to be filed.

23. There shall be filed three copies of the answer in English and Chinese, one separate copy in Chinese and a copy in English and Chinese for each plaintiff in the case.

Motion to compel.

24. Where the defendant puts in an answer amounting only to a general denial of the plaintiff's claim, the plaintiff may apply by motion for an order to compel him to answer specifically to the several material allegations in the petition; and the Court, if such allegations are briefly, positively, separately and distinctly made, and it thinks that justice so requires, may grant such an order.

Further Particulars.

25. Any defendant not giving sufficient information to enable the plaintiff reasonably to understand the nature and particulars of the defence set up against him may be ordered on the application of the plaintiff to amend his answer or to give further particulars.

The defendant may be ordered to annex copies of or produce for inspection such papers or documents in his possession or power as he has referred to in the answer.

Amendment.

26. An answer may be amended at any time by leave of the Court or with the consent of the plaintiff.

Counterclaim.

Cross petition in same suit.

27. Where a defendant in his answer raises any specific claim against any plaintiff subject to the jurisdiction of the Court, and it appears to the Court that on such defence being established he may be entitled to relief against the plaintiff the Court may at any time after such answer is filed, upon application by the defendant, order the plaintiff to give security for his appearance at the trial in the same manner as if such claim had been made the subject-matter of a separate petition filed by the defendant,

and may make such order for the hearing of the suit and counterclaim together or otherwise as shall seem just.

Payment in to Court.

With Pleading.

28. Any party to an action may at the time of filing his Petition Answer or other Pleading pay into Court any sum of money whether by way of tender or with an admission or denial of liability or as stakeholder or trustee or otherwise.

Statement of Particulars.

29. In the case of every such payment into Court the party making the same shall state the fact of such payment in his Petition Answer or other pleading. He shall also file a statement in writing giving particulars of such payment and referring to his Petition Answer or other pleading.

Receipt.

30. The Registrar shall give a receipt to every party paying moneys into Court at any time.

Proceedings after Answer.

No pleading after answer.

31. No other pleading after answer is allowed, except by leave of the Court.

Reference of Account.

In what cases.

32. Where it appears to the Court at any time after suit instituted, that the question in dispute relates either wholly or in part to matters of mere account, the Court may order that it be referred either wholly or in part to some person agreed on by the parties, or in case of their non-agreement, appointed by the Court.

The referee shall enter into the account and hear evidence and report on it to the Court, according to the order; and the Court after hearing the parties may adopt the conclusion of the report either wholly or in part, or may direct a further report to be made by the referee, and may grant any necessary adjournment for that purpose.

Dismissal for want of Prosecution.

In what cases.

33. Where it is the duty of the plaintiff by reason of any provision of these rules or in pursuance of any order of the Court to file any document or take any steps in any action or matter, and such document or step is not filed or taken within the limit of time prescribed by the rules or order as the case may be, the defendant may by motion apply to the Court to have the petition dismissed and upon such application being made the Court may, if it thinks fit, make an order dismissing the petition, or make such other order or impose such terms as the Court thinks just and reasonable.

Discontinuance.

Notice of.

34. A plaintiff who desires to discontinue the action or matter against all or any of the parties thereto shall give written notice to the Registrar and to the parties as to whom he wishes to discontinue the action or matter.

Registrar.

Record to be kept.

35. (i) The Registrar of the Court shall keep a complete file and record of every action and shall enter therein every document filed and every order made and every document and entry in such record shall be distinguished by a number corresponding with the number of the action or matter to which the entry relates.

Filing documents, etc.

(ii) When, under these rules, any application is to be made to, or any notice or other document is to be delivered to or filed with the Court, such application, notice, delivery, or filing, shall be effected by leaving during office hours the application in writing or the document in the Registrar's office and not otherwise.

Hearing List.

Hearing List.

36. There shall be kept by the Registrar a Hearing List for causes between Chinese and Chinese and a Hearing List for causes between foreign plaintiffs and Chinese defendants.

Whenever a petition shall have been filed the Registrar shall enter the case upon the Hearing List to which it belongs and, unless the Court shall otherwise order, it shall come on for hearing strictly in its order upon such list.

General Powers of the Court.

Postponement.

37. The Court (for reasons which must be duly recorded) may at any time do any of the following things as the Court thinks just :—

(i) Defer or adjourn the hearing or determination of any action, proceeding or application :

(ii) Order or allow the striking out or amendment of any pleading :

(iii) Appoint or allow a time for, or enlarge or abridge the time appointed or allowed for, or allow further time for the doing of any act or the taking of any proceeding.

(iv) Make orders for production, inspection or discovery of documents, payment into or delivery to the Court or interim injunctions or other orders of an interim or interlocutory nature.

38. No action or proceeding shall be treated by the Court as invalid on account of any technical error or mistake in form or words.

Interlocutory Applications.

Interlocutory applications to be made by motion.

39. All applications to the Court made after service of petition and before trial shall be made by motion in open Court and notice of every application shall be given to the opposite party at least two clear days before the day fixed for the hearing thereof.

Hearing.

Hearing of cause non-appearance of both parties.

40. When a cause in the Hearing List has been called on, if neither party appears either in person or by counsel or attorney, the Court, on being satisfied that the plaintiff has received notice of the hearing, shall, unless it sees good reason to the contrary, strike the cause out of the Hearing List.

Non-appearance of plaintiff.

41. If the plaintiff does not appear in person or by counsel or attorney, the Court, on being satisfied that the plaintiff has received notice of the hearing shall, unless it sees good reason to the contrary, strike out the cause, and make such order in favour of any defendant appearing as seems just.

Non-appearance of defendant.

42. If the plaintiff appears, but the defendant or any of the defendants does not appear, in person or by counsel or attorney, the Court shall, before hearing the case, inquire into the service of the petition and of notice of hearing on the absent party or parties.

If not satisfied as to the service on every party, the Court shall order that further service be made as it directs, and adjourn the hearing of the cause for that purpose.

If satisfied that the defendant or the several defendants has or have been duly served with the petition and with notice of the hearing the Court may proceed to hear the cause notwithstanding the absence of the defendant or any of the defendants, and may, on the evidence adduced by the plaintiff, give such judgment as appears just.

Re-hearing for defendant.

43. Where the Court hears a cause and gives judgment in the absence of and against any defendant, if such defendant shall apply within one month from such judgment the Court may, if it thinks fit, on such terms as seem just, set aside the decree and rehear the cause, on its being established to the satisfaction of the Court that the defendant's absence was not wilful and that he has a defence upon the merits.

Restoration of cause to list for plaintiff.

44. Where a cause is struck out by reason of the absence of the plaintiff, it shall not be restored without leave of the Court.

Procedure at the Hearing.

Order of Proceeding.

45. The order of proceeding at the hearing of a cause shall be as follows :

The party on whom the burden of proof is thrown by the nature of the material issues or questions between the parties has the right to begin :

He shall address the Court and open his case.

He shall then call his evidence and examine his witnesses in chief.

When the party beginning has concluded his evidence, he shall ask the other party if he intends to call evidence (in which term is included documentary evidence not already read or taken as read) ; and if answered in the negative, he shall be entitled to sum up the evidence already given, and comment thereon ; but if answered in the affirmative, he shall wait for his general reply.

When the party beginning has concluded his case, the other party shall be at liberty to address the Court, and to call evidence, and to sum up and comment thereon.

If no evidence is called or read by the latter party, the party beginning, shall have no right to reply, unless he has been prevented from summing up his case by the statement of the other party of his intention to call evidence.

If the party opposed to the party beginning calls or reads evidence, the party beginning shall be at liberty to reply generally on the whole case, or he may with the leave of the Court call fresh evidence in reply to the evidence given on the other side.

Where evidence in reply is tendered, and allowed to be given, the party against whom the same has been adduced shall be at liberty to address the Court, and the party beginning shall be entitled to the general reply.

Cross-examination and re-examination

46. Each witness, after examination in chief, shall be subject to cross-examination by the other party, and to re-examination by the party calling him, and after re-examination may be questioned by the Court, and shall not be recalled or further questioned save by leave of the Court.

Note of evidence.

47. The Court shall take or cause to be taken a note of the evidence.

Objection to evidence.

48. All objections to evidence must be taken at the time the question objected to is put, or, in case of written evidence, when the same is about to be put in, and must be argued and decided at the time.

Note of objection.

49. Where a question put to a witness is objected to, the Court, unless the objection appears frivolous, shall take a note of the question and objection, if required by either party, and shall mention on the notes whether the question was allowed to be put or not, and the answer to it, if put.

Documentary evidence.

50. Documentary evidence must be put in and read, or by consent taken as read.

Every document put in evidence shall be marked by the Court at the time, and shall be retained by the Court and except by leave of the Court shall not be delivered out of Court until seven days after judgment and not then if any application for leave to appeal shall have been made.

Witnesses.

Summons.

51. Where it is shown to the Court that any person within the particular jurisdiction is likely to give material evidence, and will not voluntarily attend, the Court shall issue a summons for his attendance. In the case of a witness outside the jurisdiction the Court may request the competent authority to order or secure the attendance of such witness.

Warrant after summons.

52. If any person so summoned does not obey the summons, and does not excuse his failure to the satisfaction of the Court, then (after proof ~~on oath~~ of the service of the summons) the Court may issue its warrant to compel his attendance.

Warrant in first instance.

53. Where it is shown to the Court that any person within the particular jurisdiction is likely to give material evidence and that it is probable he will not attend unless compelled to do so, then instead of issuing a summons the Court may issue a warrant in the first instance.

Refusal to answer.

54. If any witness within the particular jurisdiction refuses to answer any question put to him and does not excuse his refusal to the satisfaction of the Court, then the Court may, by warrant, commit him to prison.

Examination of witness before trial.

55. When any action is pending and a party thereto shall satisfy the Court that it is likely that a material witness will be unable to be present at the trial the Court may make an order, notice of which shall be served on the other party or parties, for the examination of such witness before the Court at any time before the trial.

The deposition of the witness shall be take down in writing and may be used at the trial. If the Court shall be satisfied at the trial that the witness is able to be present the deposition shall not be used.

Judgment.

Publicity.

56. Decisions and judgments shall be delivered or read in open Court.

Summons to hear judgment.

57. If the judgment of the Court is reserved at the hearing, parties to the suit shall be summoned to hear judgment, unless the Court at the hearing state the day on which judgment will be delivered, in which cases no summons to hear judgment shall be issued.

Notice to parties of judgment.

58. All parties shall be deemed to have notice of any decision or judgment, if the same is pronounced at the hearing.

All parties duly served with notice to attend and hear judgment shall be deemed to have notice of the judgment when pronounced.

Judgment in writing.

59. Every judgment or order whether final or interlocutory shall be duly put into writing and signed and sealed by the Court.

Date of judgment.

60. Every judgment or order shall bear the date of the day on which it is pronounced.

Office copies.

61. Any party to a suit is entitled to obtain a copy of any judgment or order made therein and such copy shall be duly certified under the Seal of the Court.

Instalments.

62. A decree or order may direct that money directed to be paid by any person be paid by such instalments as the Court thinks fit.

How payment to be made.

63. All money directed by any decree or order to be paid by any person shall be paid into Court in the suit or matter, unless the Court otherwise directs.

Detention or security after order.

64. A person directed by a decree or order to pay money, or do any other act, may in the discretion of the Court be detained in safe custody or released upon security but no defendant against whom judgment has been given shall be released except by special leave of the Court, until he gives bail or security for his further appearance with a surety or sureties to the satisfaction of the Court in the case of an order to pay money in a sum equal to the full amount of the judgment debt or in the case of an order to do anyother act in such sum as the Court shall think fit.

If being called upon to appear by order of the Court or in answer to a judgment summons the defendant fails to appear his surety or sureties shall forthwith pay into Court the whole amount of such security and in default thereof shall be liable to be arrested and kept in custody until the same is paid.

Execution against goods.

65. Where the decree or order is one directing payment of money, and the person directed to make payment refuses or neglects to do so according to the exigency of the decree or order, the person prosecuting the decree or order shall be entitled to apply to the Court for execution against the property of the disobedient person.

Stay of Execution.

Power to stay pending other suit.

66. The Court may, if under the circumstances of any case it thinks fit. on the application of any party and on such terms as seem just, stay execution of a decree or order (a) pending another suit in the same or any other Court, (b) pending an appeal or re-hearing, or (c) for any other good and sufficient cause.

Seizure and Sale of Property.

Warrant of execution against property.

67. The Court shall, unless it sees good reason to the contrary, on the application of the person prosecuting the decree or order, issue under the Seal of the Court a warrant of execution, directed to such officer or person as the Court shall think fit, who shall be thereby empowered to levy the money ordered to be paid (with the expenses of the execution) by seizure and sale of the property of the disobedient person.

How property to be dealt with

68. The Court shall hold any property seized as security for the amount directed to be levied by the execution, or so much thereof as is not otherwise levied, for the benefit of the person prosecuting the decree or order.

Sale.

69. The sale of property seized in execution shall be conducted under the order of the Court at such time and in such manner as the Court shall order.

Return of Warrant.

70. Every warrant of execution shall be returned by the person to whom it is directed, who shall certify thereon how it has been executed.

Payment before Sale. -

71. In or on every warrant of execution the Court shall cause to be inserted or indorsed the sum of money adjudged; and if the person against whose property execution is issued before actual sale of the property, pays or causes to be paid into Court, the sum of money adjudged, together with all expenses, the execution shall be superseded and the property seized shall be discharged and set at liberty.

Summons to Judgment Debtor.

In what cases.

72. Where a decree or order directing payment of money remains wholly or in part unsatisfied (whether a warrant of execution has issued or not), the person prosecuting the decree or order may apply to the Court for a summons, requiring the person by whom payment is directed to be made to appear and be examined respecting his ability to make the payment directed, and the Court shall, unless it sees good reason to the contrary, issue such a summons.

Examination.

73. On the appearance of the person against whom the summons is issued, he may be examined by or on behalf of the person prosecuting the decree or order, and by the Court, respecting his ability to pay the money directed to be paid, and for the discovery of property applicable to such payment, and as to the disposal which he may have made of any property.

He shall be bound to produce all books, papers, and documents in his possession or power relating to property applicable to such payment.

Whether the person summoned appears or not, the person prosecuting the decree or order, and all other witnesses whom the Court thinks requisite, may be examined respecting the matters aforesaid.

The Court may, if it thinks fit, adjourn the hearing of the summons from time to time, and require from the person summoned such security for his appearance at the adjourned hearing as seems fit or detain him in custody, there to remain until the adjourned hearing, unless sooner discharged.

Discharge from prison on payment.

74. Any person so imprisoned, who pays the money by the decree or order directed to be paid, or the instalments thereof payable, shall be discharged out of custody.

Rescinding or variation of order for payment.

75. On the hearing of any such summons as aforesaid, the Court, if it thinks fit, may rescind or alter any decree or order previously made against him as to the manner of payment and make any further or other order, either for payment forthwith, or by any instalments, or in any other manner as the Court thinks reasonable and just.

Garnishee Procedure.

Proceedings.

76. A party, after judgment has been given against him, may be examined before the Court as to any debts due, owing, or accruing to him from any persons, and if any such person being within the jurisdiction of the court be then present, he may be required forthwith to show cause why he should not be ordered to pay into Court for the benefit of the judgment creditor the amount of such debt or such portion of it as will satisfy the judgment debt, and the Court may make an order for the payment of such debt or such portion as will satisfy the judgment debt, and such order may be enforced in the same manner as any other order of the Court. A receipt shall be given for the same to the person paying the same, which shall be a sufficient discharge and acquittance for such amount as between the person paying and the judgment debtor.

Summons to Garnishee.

77. A party who has obtained a judgment or order for the recovery and payment of money, or a defendant who has obtained such judgment against the plaintiff, may at any time lodge with the Registrar a petition stating that the judgment or order is unsatisfied, and that a third person (hereafter alluded to as the garnishee) is indebted to the judgment debtor, and is within the jurisdiction of the Court as regards such debt, and the Court shall thereupon issue a summons to the garnishee at the suit of the judgment creditor for the amount due by the garnishee to the judgment debtor or such portion of it as may be sufficient to satisfy the judgment or order.

Service.

78. The summons shall be personally served on the garnishee, and shall have the effect of an order restraining him from parting with or disposing of any debt due, owing, or accruing from him to the judgment debtor and the garnishee shall appear in Court on the day named in the summons to show cause why he should not be ordered to pay into court the whole or part of his debt in manner above provided.

Execution out of the Jurisdiction.

By request.

79. Where it is desired to levy execution outside the jurisdiction, the Court may request the competent Authority to levy such execution and any money produced by such execution shall be received by the Court and dealt with as justice shall require.

Arrest.

In what cases.

80. Where the decree or order is one directing some act to be done other than payment of money, and the person directed to do the act refuses or neglects to do it according to the exigency of the decree or order, the person prosecuting the decree or order shall be entitled to apply to the Court for a warrant of arrest against the disobedient person.

Warrant.

81. The Court shall, unless it sees good reason to the contrary, on the application of the person prosecuting the decree or order, issue, under the Seal of the Court, a warrant of arrest directed to a proper officer who shall be thereby empowered to arrest the disobedient person, and detain him in custody until further order.

Suits by Agents.

In whose name and how proceedings to be taken.

82. Every person doing any act or taking any proceeding in the Court as plaintiff, or otherwise, must do so in his own name and not otherwise, and either by himself or by counsel or by an agent thereunto lawfully authorized in writing.

Filing of power of attorney.

83. Where such act is done or proceeding taken by an agent, the power of attorney, or instrument constituting the authority or an authenticated copy thereof must be filed in the Court before or at the commencement of the proceedings.

Proceedings by or against Partnerships.

Firm name.

84. (1.) Persons claiming or being liable as partners may sue or be sued in the firm name.

Partner's names to be declared.

(2.) Where partners sue in the firm name, they must, on demand in writing on behalf of any defendant, forthwith declare the names and addresses of the partners.

Stay of proceedings.

(3.) Otherwise, all proceedings in the suit may, on application, be stayed on such terms as the Court thinks fit.

(4.) When the names of the partners are so declared, the suit proceeds in the same manner, and the same consequences in all respects follow, as if they had been named as the plaintiffs in the petition.

(5.) All subsequent proceedings, nevertheless, continue in the firm name.

Service.

(6.) Where partners are sued in the firm name, the petition must be served either on one or more of the partners within the jurisdiction, or at the principal place of the partnership business within the jurisdiction on some person having then and there control or management of the partnership business.

(7.) Where one person, carrying on business in the name of a firm, apparently representing more persons than one, is sued in the firm name, the petition may be served at the principal place of the business within the jurisdiction on some person having then and there control or management of the business.

Appearance.

(8.) Where partners are sued in the firm name, they must appear individually in their own names.

(9.) All subsequent proceedings, nevertheless, continue in the firm name.

Must appear in own name.

(10.) Where a person, carrying on business in the name of a firm, apparently representing more persons than one, is sued in the firm name he must appear in his own name.

(11.) All subsequent proceedings, nevertheless, continue in the firm name.

Statement of names may be obtained.

(12.) In any case not hereinbefore provided for, where persons claiming or being liable as partners sue or are sued in the firm name, any party to the suit may, on application to the Court, obtain a statement of the names of the persons who are partners in the firm, to be furnished and verified by evidence or otherwise, as the Court thinks fit.

Execution.

(13.) Where a judgment is against partners in the firm name, execution may issue:—

(i) Against any property of the partners as such; and

(ii) Against any person who has admitted in the suit that he is a partner, or who has been adjudged to be a partner; and

(iii) Against any person who has been served in the suit as a partner, and has failed to appear.

(14.) If the party who has obtained judgment claims to be entitled to issue execution against any other person, as being a partner, he may apply to the Court, for leave to do so; and the Court if the liability is not disputed, may give such leave, or if it is disputed may order that the question of the liability be tried and determined as a question in the suit, in such manner as the Court thinks fit.

Service.

How to be made.

85. Service of a petition, notice, summons, decree, order, or other document of which service is required by these rules, or according to the course of the Court, shall be made by an officer of the Court, unless in any case the Court thinks fit otherwise to direct; and service shall not be valid unless it is made under an order of the Court (in writing under the Seal of the Court), which may be either indorsed on or subscribed or annexed to the document to be served.

Personal service.

86. Unless in any case the Court thinks it just and expedient otherwise to direct, service shall be personal,—that is, the document to be served shall, together with the order for service (indorsed, subscribed, or annexed), be delivered into the hands of the person to be served.

Other service.

87. Where it appears to the Court (either with or without any attempt at personal service) that for any reason personal service cannot be conveniently effected, the Court may order that service be effected either

(i) by delivery of the document to be served together with the order for service to some agent, within the particular jurisdiction, of the person to be served, or to some other person within the particular jurisdiction through whom it appears to the Court there is reasonable probability that the document and order served will come to the knowledge of the person to be served; or

(ii) by advertisement in some newspaper circulating within the particular jurisdiction; or

(iii) by notice put up at the Court, or at some other place of public resort within the particular jurisdiction.

Computation of Time.

Days.

88. Where by these Rules, or any special order, or the course of the Court, any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, and such time is not limited by hours, the computation of such limited time does not include the day of such date or of the happening of such event, but commences at the beginning of the next following day, and the act or proceeding must be done or taken at the latest on the last day of such limited time according to such computation.

Expiry of time.

89. Where the time for the doing of any act or the taking of any proceeding expires on a Sunday or on any day upon which the offices of the Court are closed to business, the act or proceeding shall be considered as done or taken in due time if done or taken on the next day on which the offices of the Court are open to business.

Death of Party or other Change.

Change or transmission of interest or liability.

90. Where, pending a suit, any change or transmission of interest or liability occurs in relation to any party to the suit, or any party to the suit dies, or the suit is in any other way rendered defective or incapable of being carried on, any person interested may, on motion *ex parte*, obtain from the Court such order as is requisite for curing the defect, or enabling or compelling proper parties to carry on the proceedings.

But it shall be open to any person served with such an order within such time, not exceeding fourteen days, as the Court in the order directs, to apply to the Court by motion to discharge such order.

Distress for Rent.

Application.

91. An application for a warrant for distress for rent shall be made out in English and Chinese and shall be signed by the owner of the property or his duly authorised agent.

Particulars.

92. The application shall state :

(i) The name and address of the owner or agent.

(ii) The name of the tenant.

(iii) A description of the property on which distress is sought.

(iv) The amount of rent owing.

(v) The period for which such rent is payable.

(vi) The date on which such rent became payable.

Issue.

93. On the application being filed the Court shall issue a distress warrant and seals for the sealing up of the premises.

Execution.

94. The warrant and seals shall he handed to the owner or his representative who shall deliver the same to the officer in charge of the Police Station of the district in which the premises are situate. The owner or his representative shall proceed with a

police officer from the said Station to the premises and if the amount of the rent specified in the warrant is not paid the police officer shall seal up the premises and the premises shall remain sealed until further order of the Court.

Payment before Sealing up.

95. If the amount of rent specified in the warrant is paid or a settlement between the parties arranged before the premises are sealed the warrant and seals shall be returned to the Court by by the police officer.

Payment after Sealing up.

96. If the amount of rent specified in the warrant is paid or a settlement between the parties arranged after the sealing up the seals shall not be removed without an order of the Court. The Court shall issue such an order on the filing of a notice by the owner that the rent has been paid or a settlement arranged. A tenant desiring an order for the removal of seals shall apply by motion in open Court and shall give one clear day's notice to the owner or his agent of his application.

Sale.

97. If the amount of the rent specified in the warrant be not paid within 14 days after the affixing of the seals, the owner or his agent may file at the Court a written application for an order for the sale by auction of the contents of the premises. On such application the Court shall issue such an order and shall send the same direct to auctioneers appointed by the Court and the proceeds of the sale shall be paid into Court. The Registrar shall out of such proceeds, if the same be sufficient, pay to the owner or his agent the amount of the rent specified on the warrant and all Court fees, if any, paid and shall pay the surplus, if any, to the tenant.

Probate Administration Receivers and Bankruptcy.

Procedure.

98. All proceedings instituted

(i) For the proving of a Will,

(ii) For an order for the administration of the property of a deceased person subject to the jurisdiction of the Court,

(iii) For the appointment of a Receiver,

(iv) In bankruptcy,

Shall be commenced by petition in accordance with Rule 1, but such causes shall be entered by the Registrar on a list separate from the general hearing list, and shall be heard by the Court on the first convenient day.

APPEALS.

Leave to appeal to be obtained.

1. When any decision of the Court is given in a civil case in respect of a sum or matter in issue of the amount or value of $500 or upwards or determines directly or indirectly any claim or question respecting property of the amount or value of $500 or upwards any party aggrieved by the decision may apply to the Court for leave to appeal and shall be entitled to leave on the terms prescribed hereunder.

In any other case the Court may if it seems just and expedient give leave to appeal on like terms.

Nature of Appeal.

2. Subject to the provisions of these rules as to the calling of new evidence, an appeal shall consist of a revision of the case by argument of the parties or their Counsel upon the existing record.

Time for application for leave.

3. Application for leave to appeal must be made to the Court by motion *ex parte* ordinarily within seven days after the decision to be appealed from is given but afterwards by special leave of the Court. Where leave is granted the appellant shall within 14 days thereafter give security to the satisfaction of the Court for such amount, not exceeding $250, as the Court when granting leave shall order for the prosecution of the appeal and for payment of all fees and charges and of all such costs as may be awarded to any respondent by the Court.

Execution of decree or order pending appeal.

4. If leave to appeal is applied for by a person directed by a decree or order to pay any money or do any other act the Court shall direct either that the decision appealed from be carried into execution or that the execution thereof be suspended pending the appeal.

Security.

If the Court directs the decision to be carried into execution the person in whose favour it is given shall before the execution of it give security to the satisfaction of the Court for the due performance of such order as the Court may make on the hearing of the appeal.

If the Court directs the execution of the decision to be suspended pending the appeal the person against whom the decision is given shall before any order for suspension of execution give security to the satisfaction of the Court for the due performance of such order as the Court may make on the hearing of the appeal.

Evidence.

5. It is not open as of right to any party to an appeal to adduce new evidence in support of his original case but a party may with the leave of the Court allege any facts essential to the issue that have come to his knowledge after the decision of the Court in the first instance and, with such leave, adduce evidence

in support of such allegation ; and the Court may where it thinks fit allow or require new evidence to be adduced.

Limitation of time for appeal.

6. After the expiration of 6 months from the date of a decree or order leave to appeal against it shall not be given.

Procedure.

Appeal Petition ; time for filing.

7. The appellant must file his petition of appeal in Court within 14 days after leave to appeal has been given.

Contents.

8. The petition of appeal shall set forth the grounds of appeal and may not refer to any fact not appearing on the record or evidence or which may not by inference be deduced therefrom but may contain any matter by way of argument in support of the appeal.

Service.

9. The petition of appeal shall be served on all other parties to the suit unless the Court shall otherwise direct.

Respondent's answer.

10. Any person on whom a petition of appeal has been served may within 14 days after service file in the Court an answer to the petition of appeal.

The answer may not refer to any fact not appearing on the record or evidence or not by inference deducible therefrom but may contain any matter by way of argument against the appeal.

Copies furnished.

11. The answer shall be served on all other parties to the suit unless the Court shall otherwise direct.

Objections in answer.

12. All matter of objection to an appeal as being out of time or on any grounds other than on the merits of the case itself must be substantially raised by the party desiring to rely thereon in and by the answer to the petition of appeal and if not so raised, or where no answer is put in, no such objection shall be permitted to be raised at the hearing of the appeal.

Effect of not answering.

13. The absence of an answer shall not preclude any person interested in supporting the decree or order from supporting the same on the merits at the hearing of the appeal.

Day of Hearing.

14. The Court shall fix a day for the hearing of the appeal.

Copies of record.

15. In all appeals the registrar shall at the request of any party to the suit and on payment of the prescribed fees furnish him with a copy of the record including all evidence taken.

Alternative Appeal.

Alternative.

16. On the application of any party and the consent of all the other parties, the Appeal shall be heard by the Court before which the case was tried in the first instance. Such an Appeal shall be subject to the same rules and judgment therein shall have the same force as if the Appeal were to and decided by the duly constituted Court of Appeal.

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